

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:03CR76

UNITED STATES OF AMERICA)	
)	
VS.)	<u>ORDER</u>
)	
ROBERT WARREN)	
VIKI WARREN)	
)	
And)	
)	
THERON MULLINAX, Guardian)	
ad Litem for George Howard)	
McElrath, and RHONDA)	
McELRATH STREADWICK,)	
)	
Petitioners.)	
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THIS MATTER is before the Court on Petitioners' motion to renew their petition herein.

I. PROCEDURAL HISTORY

On September 7, 2005, the undersigned sentenced Defendant Robert Warren to a total of 76 months imprisonment for his convictions for conspiracy to defraud the federal crop insurance program and to commit

money laundering. **Judgment in a Criminal Case, filed September 13, 2005; Amended Judgment in a Criminal Case, filed October 7, 2005.** On that same date, Robert's wife, Viki Warren, was sentenced to a total of 66 months imprisonment for her convictions for conspiracy to defraud the federal crop insurance program and mail fraud. **Judgment in a Criminal Case, filed September 13, 2005; Amended Judgment in a Criminal Case, filed October 7, 2005.** Based on the Government's request, which was not objected to by the Defendants, both judgments contain a forfeiture provision pursuant to which each of the Defendants' interests in 17 tracts of real property are forfeited. **See, United States' Request for Language in Judgments Regarding Forfeiture, filed September 7, 2005, at Attachment A.** The Government's Attachment A did not contain legal descriptions for the parcels to be forfeited. One of those tracts, Tract 13, is the subject of a separate lawsuit between Petitioners and the Defendants. **See, *Mullinax v. Warren*, Civil No. 1:05cv61.**

II. DISCUSSION

Theron Mullinax is the court-appointed Guardian *Ad Litem* for George Howard McElrath, a 91 year old man who owns in excess of 900 acres of land in Henderson County, North Carolina, which, in large part, are bounded by the Pisgah National Forest. As such, there appears to be no dispute that the land is extremely valuable. The property is known as “the Homeplace Tract,” which consists of approximately 160 acres; “the Seniard Creek Farms Tract,” which consists of approximately 500 acres; “the Hoot Owl Tract,” which consists of approximately 200 acres; “the Grey Heaven Tract,” which consists of approximately 70 acres; and “the Hogback Tract,” which consists of approximately 25 acres. **Complaint, filed in Civil No. 1:05cv61, at 3.**

According to the complaint, at a time when Mr. McElrath was vulnerable and perhaps incompetent, Robert Warren obtained a deed from him which described the Hogback Tract and thus allegedly obtained ownership over the property. The state court action, now removed to this Court, was designed to set aside that conveyance as having been fraudulently obtained.

The Government in this criminal action sought an order of forfeiture of various assets owned by the Warrens in order to use the same to satisfy a

money judgment against them in the amount of \$7.3 million in favor of the Government. The undersigned, in imposing sentence on the Defendants, ordered forfeiture of the Hogback Tract. Petitioners cry foul, noting that the Government had assured them it did not seek any interest in the Homeplace Tract and would litigate the ownership of the Hogback Tract in the separate civil action. The pleadings filed in this action by the Government show that the Petitioners' position is accurate.

All parties concede that the Homeplace Tract should not be forfeited and, indeed, no claim is made by the Government to that property. However, the legal descriptions provided for the Homeplace and Hogback Tracts are the same, apparently because a parcel identifier number and acreage refer to the Homeplace Tract. The Court has determined that the legal description for the Hogback Tract is the following: Property located off of Dave Whitaker Road, Henderson County, North Carolina, and found in Henderson County Deed Book 1073, Page 45. **Petitioner's Response to July 26, 2005 Order, filed August 11, 2005, ¶ 1.** Since the parties agree that the Homeplace Tract is not listed in the preliminary order of forfeiture, a legal description for that parcel is unnecessary at this time.

The Government argues that the order of forfeiture only forfeits the ownership interest, if any, which Robert and/or Viki Warren have in the Hogback Tract. While that may be the case, the fact remains that the Government seeks to dispose of forfeited property in order to satisfy its money judgment. The Court finds that the Government intervened in the state court action which was filed to litigate the issue of whether Robert Warren, in fact, had any legitimate claim to that tract of property. And, having successfully intervened, the Government then removed the case to this Court. It is cumbersome and confusing to have forfeiture ordered in this action while the very issue of ownership is being litigated in another action within this Court.

In addition, the Court finds that the criminal judgments for each of the Warrens should be amended to delete the generally described “seventeen tracts of real property” ordered forfeited in the criminal judgments. An attachment, a copy of which is appended to this Order and contains a listing of each parcel and the legal description thereof, shall be added to each Defendant’s judgment.

III. ORDER

IT IS, THEREFORE, ORDERED that the Petitioners' motion for leave to renew their petition is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Judgments of Criminal Conviction for Robert Warren and Viki Warren shall be amended to delete the general reference to 17 tracts of real estate on Page 5 of the Judgment, and instead, there shall be attached to the judgments an attachment, a copy of which is appended hereto;

IT IS FURTHER ORDERED that any issues relating to forfeiture of the Hogback Tract are to be resolved in the case of *Mullinax v. Warren*, Civil No. 1:05cv61; and

IT IS FURTHER ORDERED that the United States may not seek forfeiture of the Homeplace Tract and shall take any and all steps to clear title to that property.

The Clerk of Court is instructed to prepare amended criminal judgments for both Defendants forthwith.

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ATTACHMENT

Sixteen tracts of real property are described below:

1. Property located on Smith Cove Road, Buncombe County, North Carolina, containing approximately 16.99 acres, and found in Buncombe County Deed Book 1775, Page 177.
2. Property located on Smith Cove Road, Buncombe County, North Carolina, containing approximately 28.46 acres, and found in Buncombe County Deed Book 2015, Page 427.
3. Property located off of Dave Whitaker Road, Henderson County, North Carolina, containing approximately 19.44 acres, and found in Henderson County Deed Book 966, Page 221.
4. Property located on J.D. Hooper Estate, tracts #4 and #6, in Henderson County, North Carolina, containing approximately 32.44 acres, and found in Henderson County Deed Book 970, Page 613.

5. Property located off of Gladys Fork Road, Buncombe County, North Carolina, containing approximately 36.54 acres, and found in Buncombe County Deed Book 2068, Pages 580 and 583.
6. Property located on Black Cove Road, Buncombe County, North Carolina, containing approximately 50 acres and found in Buncombe County Deed Book 1930, Page 223, which was substituted for a Hartford Financial Services Group, Inc., annuity, account number 710473987.
7. Property located at 1396 Kilgore Bridge Road, Spartanburg County, South Carolina, containing approximately 113.96 acres, and found in Spartanburg County Deed Book 069E, Page 779.
8. Property located at SR 1353 off Hooper Lane Road, Henderson County, North Carolina, containing approximately 1.86 acres, and found in Henderson County Deed Book 982, Page 041.
9. Property located at Tract A and Lot 2, J.D. Hooper Estate, Henderson County, North Carolina, containing approximately 16.10 acres, and found in Henderson County Deed Book 982, Page 796.
10. Property located at 112 Smith Cove Road, Buncombe County, North Carolina, containing approximately 1.00 acres, and found in Buncombe County Deed Book 2087, Page 515.
11. Property located on Lower Beaverdam Loop Road, Buncombe County, North Carolina, containing approximately 2.53 acres, and found in Buncombe County Deed Book 2184, Page 893.
12. Property located off of Dave Whitaker Road, Henderson County, North Carolina, containing approximately 1.35 acres, and found in Henderson County Deed Book 1021, Page 227.

13. Property located at 46 Billy Cove Road, Buncombe County, North Carolina, containing approximately 1.13 acres, and found in Buncombe County Deed Book 2330, Page 820.

14. Property located on Beaverdam Loop Road, Buncombe County, North Carolina, containing approximately 4.30 acres, and found in Buncombe County Deed Book 2386, Page 388.

15. Property located at 115 Casey Road in Spartanburg County, South Carolina, containing approximately 5.0 acres, and found in Spartanburg County Deed Book 073Y, Page 962.

16. Property located on Beaverdam Loop Road, Buncombe County, North Carolina, containing approximately 26.43 acres, and found in Buncombe County Deed Book 1144, Page 79.

Signed: November 9, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

